

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2466 of 1997

with

Civil Application No. 6768 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GSRTC

Versus

BIPINBHAI NATVERLAL GONDIA

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Appearance:

MR HEMANT S SHAH for appellant.

Respondent No.1-served.

MR RC KAKKAD for respondent No.2.

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CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 12/03/98

ORAL JUDGEMENT (Per A.M. Kapadia, J.)

The only question which calls for determination of this Court in this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) is as to whether the Motor Accident Claims Tribunal is justified in not deducting that part of the amount from the amount of

compensation awardable to the owner of the Ambassador car for the damages caused to the car, to the extent of negligence apportioned on the part of the driver of the car involved in the vehicular accident?

In order to appreciate the aforesaid question, few facts may be stated at the outset which are as under:

The accident in question took place on 8.6.1993 involving ST Bus No. GRU 8771 and Ambassador car No. GBI 8712 on Jamnagar- Khambhalia road near Aerodrome. The accident claimed the lives of two persons while one person received severe bodily injuries and the ambassador car was also heavily damaged. Therefore, the heirs and legal representatives of the deceased persons have claimed compensation for the dependency benefits, the injured person has filed claim petition for the injuries sustained by him and the owner of the car filed claim petition for the damages caused to the car.

The owner of the car filed MACP No. 382 of 1993. The learned Tribunal decided the issue of negligence and apportioned the liability of the negligence in the ratio of 70:30 between the S.T. bus driver and the car driver. The learned Tribunal has awarded compensation to the heirs and legal representatives of the two deceased persons and to the injured applicant with which we are not concerned at this stage.

In so far as MACP No. 382 of 1993 is concerned, the Tribunal has awarded compensation of RS.70,000/- by way of damages to the car as against the claim of RS. 1 lakh. The Tribunal has straightaway awarded the aforesaid amount with interest and cost thereon without deducting the amount of 30% to which extent the driver of the car was held negligent and liable.

It is well settled proposition of law of tort that tort-feasor cannot claim against its insurer under the provisions of the Act.

We are of the opinion that non-deduction of the amount of 30% from the amount of compensation awardable to the owner of the car cannot be justified. The Tribunal has not taken care of deducting the said amount after having held that the driver of the car was negligent to the extent of 30%. Hence, to that extent the judgment and award suffer from the infirmities which are required to be corrected at the hands of this Court while exercising powers under Section 173 of the Act.

So far as the question of negligence and the determination of compensation for the damages caused to the car is concerned, learned advocate for the appellant Mr. Hemant S. Shah has not assailed the said finding. Incidentally, it may be mentioned that the S.T. Corporation has also filed First Appeal No.2463 of 1997 and allied matters challenging the finding of negligence and the quantification of compensation awarded by the Tribunal in favour of the heirs and legal representatives of the deceased and the injured applicant. The aforesaid appeals came to be decided by the Division Bench of this Court (Coram: J.N. Bhatt & H.R. Shelat, JJ.) and in the final hearing, the said three appeals having found meritless were dismissed by the said Bench confirming the finding recorded by the Tribunal with respect to the negligence and the quantification of compensation to the claimants of the three claim petitions.

The net result is that the Tribunal has not deducted 30% amount of compensation from the amount of Rs.70000/and hence that part of the judgment and award is required to be modified and we deduct 30% of the amount from Rs.70,000/- Therefore, the net compensation which is payable to the claimant of the MACP No.382 of 1993 is Rs.49,000/(Rs.70,000 minus Rs.21,000, being 30% of the compensation) with interest and proportionate cost thereon. Accordingly, the award is required to be modified to the aforesaid extent by allowing the appeal in part.

It is stated at the bar by learned advocate for the appellant that the amount of RS.70000 awarded to the claimant is already recovered along with interest and cost, by filing execution proceedings and, therefore, amount of RS.21,000 with interest and proportionate cost thereon is required to be ordered to be refunded to the S.T. Corporation by the claimant. We fully agree with the aforesaid submission made by Mr. Hemant S. Shah and we hereby order, in absence of the owner of the car who chose to remain absent though served, to pay back the amount of Rs.21,000 with interest and proportionate costs thereon to the S.T. Corporation within a period of four weeks hereof, failing which it would be open for the S.T. Corporation to take appropriate action for the recovery of the said amount.

In the premise, the appeal succeeds in part and is hereby accordingly allowed. No order as to costs.

In view of the order passed in the First Appeal, the notice is discharged in civil application.

